

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RENDELL ROBINSON,

Plaintiff,

v.

9:16-CV-0285 (BKS/DJS)

JAMES TAYLOR, *et al.*,

Defendants.

Appearances:

**Rendell Robinson
07-A-6175
Five Points Correctional Facility
Caller Box 119
Romulus, NY 14541
Plaintiff, *pro se***

**Richard Lombardo, Esq.
Hon. Eric T. Schneiderman
Office of New York State Attorney General
The Capitol
Albany, NY 12224
Attorney for Defendants**

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Rendell Robinson, a New York State inmate, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Great Meadow Correctional Facility. (Dkt. No. 1). On January 4, 2017, Defendants filed a motion to dismiss under Fed. R. Civ. P. 12(c). (Dkt. No. 37). Plaintiff elected not to respond to the motion. (Dkt. No. 40). This matter was assigned to United States Magistrate Judge Daniel J. Stewart who, on August 24, 2017, issued a Report-Recommendation and Order recommending that Defendants'

motion to dismiss be granted in part as to Plaintiff's Eighth Amendment medical indifference claim against Defendant C.O. Leon Renaud and denied in all other respects. (Dkt. No. 52). Magistrate Judge Stewart advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 52, at 16).

No objections to the Report-Recommendation were filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228-29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Report-Recommendation is adopted in its entirety.

Further, in recognition of Plaintiff's status as a pro se litigant, leave to file an amended complaint within thirty (30) days of the date of this Order is granted. Any such amended complaint will replace the existing complaint, and must be a wholly integrated and complete pleading that does not rely upon or incorporate by reference any pleading or document previously filed with the court. *See Shields v. Citytrust Bancorp, Inc.*, 25 F.3d 1124, 1128 (2d Cir. 1994) ("It is well established that an amended complaint ordinarily supersedes the original, and renders it of no legal effect." (quotation marks omitted)). If Plaintiff fails to file an amended complaint within thirty days, the Eighth Amendment medical indifference claim against Defendant Renaud will be dismissed and the complaint will otherwise proceed as filed.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 52) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 37) is **GRANTED** as to Plaintiff's Eighth Amendment medical indifference claim against Defendant C.O. Leon Renaud and **DENIED** in all other respects; and it is further

ORDERED that Plaintiff is granted leave to file an amended complaint within thirty (30) days of the date of this Order; and it is further

ORDERED that if Plaintiff fails to file an amended complaint within thirty (30) days of the date of this Order, the Eighth Amendment medical indifference claim against Defendant Renaud will be dismissed and the complaint will otherwise proceed as filed; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 19, 2017


Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge